

**Probate Conservatorship Task Force  
Business Meeting**

**San Francisco, California  
February 3, 2006**

**Minutes**

**Task Force Members Present:** Hon. Roger W. Boren (*Chair*), Hon. S. William Abel, Hon. Aviva K. Bobb, Hon. Don Edward Green, Hon. Donna J. Hitchens, Hon. Frederick Paul Horn, Hon. Laurence Donald Kay (Ret.); Ms. Gina L. Klee, Hon. William H. Kronberger, Ms. Jody Patel, Ms. Sandy Sanfilippo, Mr. Alan Slater, Hon. James Michael Welch, Hon. Barbara Miller, and Ms. Gloria Ochoa

**Task Force Members Not Present:** Hon. Steven E. Jahr, Ms. Margaret Little, and Hon. Sandra Margulies

**Task Force Staff:** Chris Patton, (*Lead*), Rod Cathcart, Douglas C. Miller, Dan Pone, Evyn Shomer, Rowena Rogelio, and Susan Reeves

**Item 1            Welcome and Introduction of Members**

Justice Roger Boren, Chair, called the meeting to order, welcomed task force members, and indicated that media and public may be attending the meeting. [Note: Meeting was attended by Jack Leonard, *Los Angeles Times*.] Members and staff made introductions.

**Item 2            Task Force Charge**

Justice Boren reviewed the Charge of the Probate Conservatorship Task Force. Task force will be seeking input from a broad range of interested individuals: conservatees; private professional conservators, guardians, and fiduciaries; family members; attorneys; advocacy groups; and judicial officers, court staff and members of the legislature and executive branch.

The task force is to perform a comprehensive review of laws and practices, and make recommendations to the Judicial Council for reforms and improvement to the overall system of conservatorship administration; create model guidelines for probate courts practices and procedures in the handling of cases; and make other recommendation to the Judicial Council.

### **Item 3            Task Force Report**

Justice Boren stated that it should be possible to have an interim report to the Judicial Council in fall of 2006, with the final report in spring of 2007.

### **Item 4            Task Force Meeting Guidelines**

Justice Boren discussed task force ground rules. Notes will be taken, and, after task force approval, minutes will be posted to both Courtinfo.gov and Serranus websites. Task force will use modified Roberts Rules of Order, usually making decisions by consensus, but, where necessary, by motions with discussion and decisions made by simple majority. Members are asked to respect each other's opinions, be on time, and stay for entire meetings.

Meetings will be open for the public and media, except when task force is in executive session. Public comments will likely be a scheduled portion of the agenda, rather than allow comments at any time. Requests for press interviews are to be referred to the Public Information Officer, Lynn Holton. An email address will be available for the public ([PCTF@jud.ca.gov](mailto:PCTF@jud.ca.gov)). Any letters received should be directed to lead staff, Chris Patton at the AOC.

Staff will be sent meeting materials via email but some hard copies will also be available during the meetings.

### **Item 5            Review of Probate Conservatorship Laws, Rules of Court, Practice and Procedure**

Doug Miller provided a review of practices and procedures on probate law from his February 3, 2006 memo, *Background on Probate Conservatorships*.

Task force had a short discussion on temporary conservatorships which are often used in three types of cases: (1) Hospitals forcing patients to leave after being released, (2) Siblings attempting to gain temporary conservatorship over a parent (Cain v. Abel), and (3) Stepping in before someone is abused. Some courts have gone beyond the language of the Probate Code if they feel situations warrant immediate action to stop abuse. For example, Orange County has a local rule which requires notification to family members in cases of temporary conservatorships.

Mr. Miller indicated that few conservatorship cases go to trial on the issues of "capacity". Generally trial is over who will be the conservator, what kind of rights will be given, etc.

### **Item 6            Overview of Current Issues and Summary of Legislative History**

Dan Pone provided an overview of current issues, including a brief summary of the *Los Angeles Times* four-part "Guardians for Profit" series that was published in mid-November 2005, as well

as the earlier Riverside County scandal from the late 1990s. Also provided was a brief summary of selected legislative history regarding prior efforts to establish a licensure and regulation system for private professional conservators, guardians, and other fiduciaries. In addition, Mr. Pone covered some of the key legislative efforts during the last decade that have focused more narrowly on efforts to combat fraud and abuse by conservators, guardians, trustees and others.

## **Task Force held brief Executive Session**

### **Item 7            Review of Pending Legislation**

Dan Pone reviewed with the task force members two legislative proposals that are designed to make reforms to California's conservatorship system: (1) AB 1363 (Jones), the Omnibus Conservatorship and Guardianship Reform Act of 2006, and (2) a proposal by Senator Bowen regarding court reviews of conservatorships and the court's treatment of ex parte communications in these cases. Mr. Pone presented a brief overview of the bill's key provisions, and then reviewed the recommendations from the legislation subcommittee of the Judicial Council's Probate and Mental Health Advisory Committee ("the subcommittee") regarding what position the council should adopt on the bills. The task force unanimously concurred with each of the subcommittee's recommendations, which are set out below.

Senator Bowen's bill, as proposed to be introduced -- Senator Bowen is planning on introducing legislation that would allow the court, on its own motion or upon request, to order a review of the conservatorship at any time. Senator Bowen's proposed legislation would also clarify the role of the court investigator in conducting their evaluations to focus not only on whether conservatorship may be required but also to examine the conservatee's placement, quality of care, including physical and mental treatment, and the conservatee's financial condition. In addition, the bill would authorize the Judicial Council to adopt a rule of court establishing an exception to the general ban on ex parte communications to authorize the probate court to consider and take appropriate action in response to an ex parte communication regarding a fiduciary's performance of his or her duties and responsibilities or a person who is the subject of a guardianship or conservatorship proceeding.

*Subcommittee Recommendation:* Support if funded.

AB 1363 (Jones), as amended January 24, 2006 – This bill would enact the Omnibus Conservatorship and Guardianship Reform Act of 2006. Among other things, the bill would:

1. Require the Department of Consumer Affairs to establish and administer a licensing program for professional conservators and guardians, require professional conservators and guardians to be licensed, and prohibit a court from appointing non-licensed professional conservators and guardians.
2. Remove conservators and guardians from the statewide registry of conservators, guardians and trustees currently maintained by the Department of Justice, and require that

the more limited registry of trustees be maintained by the Department of Consumer Affairs, rather than the Department of Justice.

3. Require an annual, rather than a biennial, review of conservatorships at a noticed hearing.
4. Require conservators and guardians to present an annual, rather than a biennial, accounting.
5. Prohibit a court from reducing the amount of a bond in conservatorship proceedings without good cause.
6. Impose new duties on court investigators with respect to cases involving proposed conservatees.
7. Require the Judicial Council to adopt rules of court relating to conservatorships and guardianships and to develop and make available, free of charge, educational programs for non-licensed conservators and guardians.
8. Require courts to provide free assistance to non-licensed conservators and guardians, and require the Judicial Council to develop a form providing notice of the availability of these services.
9. Require the Judicial Council to establish qualifications and educational classes for probate court attorneys and investigators, to require educational classes for probate judges and public guardians, and to establish conservatorship accountability measures.
10. Establish in the California Department of Aging the Office of Conservatorship Ombudsman to collect and analyze data relative to complaints about conservatorships and to investigate and resolve complaints and concerns communicated by or on behalf of conservatees.

*Subcommittee Recommendation:* Support if amended and funded.

The task force agreed with the subcommittee's recommended position in light of the fact that AB 1363 is currently a "work in progress," and because the PCLC has already expressed the council's support for the author's overall goals of improving oversight of California's conservatorship system. The task force also concurred with each of the subcommittee's recommended positions on the major components of the bill, which are summarized below.

- Licensure: The subcommittee recommended that the Judicial Council support the licensure provisions in the bill, provided they are amended to also include those trustees that are currently required to register with local courts and the Statewide Registry. Adding trustees to the licensure system would also obviate the need to maintain the

current local registration system and Statewide Registry, which could then be repealed since those functions would be duplicative and no longer necessary.

- Court reviews: The subcommittee recommended that the Judicial Council support AB 1363 if it is amended to instead authorize the court to order reviews of conservatorships at any time, on the court's own motion or upon request, rather than mandating more frequent reviews in all cases. They believe that this alternative approach is a more flexible and cost effective method of assisting the courts in detecting and preventing abuse in the small minority of cases in which it may be occurring.
- Court investigators: The subcommittee recommended that the Judicial Council support the bill's provisions regarding court investigators, provided sufficient funding is appropriated to cover the costs of their new duties. They also recommended that the bill be amended to clarify the role of the investigators when performing their evaluations to also focus on the physical, mental, and financial well-being of the conservatees.
- Temporary Conservatorships: The subcommittee recommended that the Judicial Council oppose the provision that would require the proposed conservatee to attend the temporary conservatorship hearing as unduly burdensome on both the conservatees and the courts. However, they recommended support for tightening the standards for waiver of notice in these cases, and they also recommended amending the bill to specifically require that notice of proposed temporary conservatorships be provided to family members of the proposed conservatees.
- Accountings: The subcommittee recommended opposition to the yearly accounting requirement. However, they agreed that more attention by the courts should be focused on the required accountings, and that alternative methods of evaluating the conservatee's true financial situation should be explored, including training court investigators and other court personnel in how to better detect financial abuse.
- Enhanced education and training: The subcommittee recommended Judicial Council support for these provisions.
- Free assistance: The subcommittee generally supported increasing self-help opportunities for family members, consistent with the council's overall goal to increase access to the courts. However, they expressed some concerns about prioritizing assistance in conservatorships and guardianships over all other areas. They also explained that conservatorships can be very complicated, especially in cases involving estates, and that providing such assistance should not be interpreted as encouraging proceeding without legal counsel in such cases. Finally, a number of subcommittee and task force members expressed concerns about potential conflicts when ruling on cases in which their own court personnel may have been involved in providing assistance to the litigants. In sum, although there was support for the concept of increased self-help in

conservatorship cases, further amendments will be necessary to make these provisions workable for the courts.

- Increased resources for public guardians: The subcommittee recommended that the Judicial Council support additional funding for the public guardians. However, they did not believe it is appropriate for the council to establish the criteria for the public guardians as they are a separate entity under the jurisdiction of the counties, which are also responsible for their funding. The subcommittee also recommended amending the bill to remove any cap on the amount of the estates that the public guardian could administer.
- Ombudsman program: The subcommittee recommended support for the general concept, but raised concerns regarding the interaction between the ombudsman, the new licensure body, and the courts. They recommended obtaining additional information from the author's office about how the program would work before making a more specific recommendation regarding the council's position on this portion of the legislation.

*Task Force Action:* Agreed in concept with each of the subcommittee's recommendations, and noted that adequate funding to the courts for resources must be addressed.

## **Item 8          Appointment of Working Groups**

Justice Roger Boren appointed task force members to three working groups:

- Rules & Laws: Justice Kay, Justice Margulies, Commissioner Green, Judge Jahr, Dr. Little, Mr. Slater, Mr. Terrazas; Mr. Pone and Mr. Miller (*staff*)
- Education & Training: Justice Boren, Presiding Judge Abel, Judge Horn, Ms. Klee, Ms. Sanfilippo; Mr. Cathcart (*staff*)
- Best Practices: Judge Bobb, Judge Hitchens, Judge Kronberger, Judge Welch, Ms. Patel; Ms. Patton and Ms. Shomer (*staff*)

Justice Boren will designate chairs of the working groups and contact them in the next week or two.

## **Item 9          Future Meetings**

Next two meetings will be public hearings: March 17, 2006 at the Ronald Reagan Auditorium, Los Angeles, and March 24, 2006 at the Milton Marks Auditorium, San Francisco. Invitations will be sent out to the public and press, and speakers will be required to register with staff prior to the hearings for scheduling purposes.

Task Force discussed the possible dates for regular monthly meetings beginning in May 2006.

<i>Task Force Action:</i> No decision beyond March hearing dates.
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**Item 10      Other Business**

With no further business, the meeting was adjourned at 2:45 p.m.

*Approved by the Probate Conservatorship Task Force on March 9, 2006*